

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 13, 2009

Ref. No.: GLS-5619

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

HAWAII

After-the-Fact, Consent to Sublease K-5 of General Lease No. S-5619, Natural Energy Laboratory of Hawaii Authority, Lessee, to Uwajima Fisheries Inc., Sublessee, Kalaoa 1st-4th and Ooma 1st & 2nd, North Kona, Hawaii, Tax Map Key: 3rd/ 7-3-43: portion of 42.

APPLICANT:

Natural Energy Laboratory of Hawaii Authority (NELHA), a body corporate and politic and an instrumentality and agency of the State of Hawai'i, as Lessee/ Sublessor, to Uwajima Fisheries Inc. (UFI), a Hawaii corporation, whose business and mailing address is 73-4460 Queen Kaahumanu Highway, Kailua-Kona, Hawaii 96740, as Sublessee.

LEGAL REFERENCE:

Section 171-36(a)(6), Hawaii Revised Statutes, as amended.

"Revision to Sublease Rent Participation Policy" adopted by the Board of Land and Natural Resources (Board) on May 26, 2000, agenda item D-24, and as amended by "Resubmittal: Amendment to the Sublease Rent Participation Policy" approved by the Board on January 26, 2001, under agenda item D-8.

LOCATION:

Portion of Government lands of the NELHA site situated at Kalaoa 1st-4th and Ooma 1st & 2nd, North Kona, Hawaii, identified by Tax Map Key: 3rd/ 7-3-43: portion of 42, as shown on the attached map labeled Exhibit A.

AREA:

3.989 acres, more or less.	Consisting of a net 3.967 acres of usable/ improved land and a .0217 acre (947 square foot) perpetual historical preservation easement. No rent is being charged for the preservation easement.
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TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES X NO

LEASE CHARACTER OF USE:

To develop, maintain, and operate an ocean-related high technology industrial park in accordance with Chapter 206M and/or Chapter 227D, Hawaii Revised Statutes, and to allow for ancillary and accessory uses that will assist the development to become self-sufficient.

SUBLEASE CHARACTER OF USE:

The cultivation of various fin fish species, including, but not limited to the Japanese Flounder, also known as "Hirame" (*Paralichthys olivaceus*), Moi or Threadfin (*Polydactylus sexfilis*), Awa or Milkfish (*Chanos chanos*), Kahala or Amberjack "Kenpachi" (*Seriola dumerilli*), and a variety of seaweed "ogo" for commercial sale purposes.

TERM OF LEASE:

45 years, commencing on July 3, 2001 and expiring on July 2, 2046. First rental reopening is scheduled for July 3, 2011.

TERM OF SUBLEASE:

25-years, commencing on January 1, 1998 and expiring on December 31, 2023. Last rental reopening occurred on June 1, 2008; next rental reopening is scheduled for June 1, 2013.

ANNUAL RENTAL:

Annual rental shall be fifty percent (50%) of the net operating income (NOI). NOI is the actual net income remaining after all adjusted operating expenses are deducted from the effective gross income, including a reserve for replacement and for major repairs not covered in the operating budget. This does not include federal funds and grants.

SUBLEASE ANNUAL RENTAL:

Fixed Annual Rental Fee: \$23,802.00 Fixed for five years at Five Hundred Dollars (\$500) per acre per month. Payable in advance, in twelve equal monthly installments of \$1,983.50 on the first day of

each and every month. OR

Percentage Rent: Percentage Rent shall be two percent (2%) of gross sales. Percentage Rent shall be paid only to the extent such Percentage Rent is greater than the fixed monthly rental fee.

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

Not applicable as the subject lease does not have a provision allowing for sandwich profits.

DCCA VERIFICATION:

SUBLESSOR:

Place of business registration confirmed: YES
Registered business name confirmed: YES
Good standing confirmed: YES

SUBLESSEE:

Place of business registration confirmed: YES
Registered business name confirmed: YES
Good standing confirmed: YES

BACKGROUND:

The Natural Energy Laboratory of Hawaii Authority (NELHA) a body corporate and politic and an instrumentality and agency of the State of Hawai'i, is administratively attached to the Department of Business, Economic Development & Tourism (DBEDT). Under General Lease No. S-5619, NELHA operates an 870-acre ocean science and technology park at Keahole Point in Kailua-Kona, Hawaii.

At its meeting of November 20, 1998, Item D-4, the Board of Land and Natural Resources, approved consent to Sublease K-5 of General Lease No. S-4717, NELHA, Lessee/Sublessor, to Uwajima Fisheries Inc., Sublessee. Sublease K-5, having a 25-year term, commenced on January 1, 1998 for the operation of a land-based aquaculture facility on 2.00 acres.

At its meeting of November 19, 1999, under agenda Item D-20, the Board of Land and Natural Resources approved as amended, the cancellation of General Lease No. S-4717 and S-5137; cancellation of Governor's Executive Order No. 3282; and the Direct Issuance of a new lease (GLS-5619) to NELHA. The cancellation was effective July 2, 2001. The new lease (GLS-5619) commenced on July 3, 2001 and will expire on July 2, 2046. General Lease No. S-5619 authorized Sublessor to honor existing or pending

subleases that were current as to rent and all other terms and conditions of the subleases.

On April 19, 2001, NELHA and UFI executed Supplemental Agreement No. 1, to amend Sublease K-5, dated January 1, 1998. (EXHIBIT B) The primary agreement was modified, amended and changed as follows:

- 1) An additional 1.989 acres of property, adjacent to Tenant's existing property and including a historic perpetual preservation easement will be added to the Primary Agreement.
- 2) Paragraph 3, entitled "Facilities Use Fees" of the Primary Agreement is amended to include the 1.989 acres of improved land, at a rate of \$100/acre/month, less the 947 square foot easement for which the Tenant shall pay no rent. The monthly fixed fee for the net acreage of 3.967 acres is therefore, three hundred ninety-six and 70/100 dollars (\$396.70).
- 3) A historical perpetual preservation easement document called a "Burial Treatment Plan," describes the conditions for proper treatment of the area as approved by the Board of Land and Natural Resources.

Pursuant to Act 103, Session Laws of Hawaii 2002, as amended, relating to chapter 171-36, Hawaii Revised Statutes, the Board was authorized to waive the requirement to obtain consents to subleases under public land leases for good cause. On June 23, 2006 (Item D-1), the Board approved an amendment to GL S-5619 in which the Board waived the requirement of its approval of subleases by NELHA under GL S-5619. Rather, NEHLA was given authority to review and approve such subleases. On October 27, 2006 (Item D-3), the Board amended its action of June 23, 2006 to clarify that the effective date of NELHA's authority to consent to subleases was May 31, 2002.

On May 27, 2008, King Ocean Farm Inc. (KOFI) was granted approval-in-concept by the NELHA Board for its proposal to acquire Sublease K-5 from UFI for its on-going aquaculture program to cultivate Hiramé, Moi, Awa, Kahala, and Ogo for commercial purposes. The NELHA Board determined that KOFI appeared to have the expertise, financial backing and combined experience to be an acceptable and qualified commercial tenant.

The Land Board at its meeting of September 12, 2008, Item D-3, consented to the assignment of Sublease K-5, under General Lease No. S-5619, NELHA, Lessee, by UFI, Sublessee/Assignor, to KOFI, Assignee.

During the processing of the consent to assignment document of Sublease K-5, UFI to KOFI, the Attorney General's Office discovered that proper approvals were not obtained for consent to Sublease K-5 of General Lease No. S-5619. As a result, staff is preparing a submittal for an after-the-fact consent of Sublease K-5, under General Lease No. S-5619, to correct an oversight so processing of the assignment of sublease from UFI to KOFI may proceed.

At its meeting of October 10, 2008, Item D-6, the Board approved a Non-disturbance and

Attornment Agreement between State of Hawaii and Cyanotech Corporation, to resolve similar circumstances concerning after-the-fact approval of a sublease under GLS-5619.

ANALYSIS:

When staff processed the cancellation of General Lease No. S-4717 in 2001, some of the long-term subleases were overlooked, as the main focus at the time was the processing of the thirty-eight short-termed subleases. There were four long-term subleases missed: Sublease K-1 to Hawaiian Abalone Farms (3/1/1984-10/31/2039), Sublease K-3 to Royal Hawaii Sea Farms (9/1/1999- 8/31/2039), Sublease K-4 to Cyanotech Corporation (1/1/1990- 12/31/2025), and Sublease K-5 to Uwajima Fisheries (1/1/98- 12/31/2023).

The Original Lease (GLS-4717) provision, "In the event that a sublease shall have been entered into by Lessee and approved by Lessor and the sublease is not in default under the terms of the sublease, then the Lessor shall recognize sublessee and shall not disturb sublessees so long as sublessees attorns to Lessor and abides by the terms of the sublease" was not included in the New Lease (GLS-5619).

In prior years, staff prepared submittals that contained blanket approvals for consents to the various subleases under General Lease No. S-5619. It was staff's intention to include approvals for all existing and pending subleases in the Board actions. The Attorney General has questioned whether the approval language clearly expresses the intent to consent to all such subleases. Additionally, because Sublease K-5 predates the effective date of Act 103, Session Laws 2002, that law cannot be relied upon to reify the consent to Sublease K-5.

Therefore, this request is for an after-the-fact Consent to Sublease K-5, under General Lease No. S-5619, to clarify the Board's consent to the K-5 sublease. This in turn will allow the processing of the assignment of sublease from UFI to KOFI to be completed.

There is also a matter concerning a change in the size of the sublease area being utilized by Sublessee, under Sublease K-5, which increased from 2.00 acres to 3.989 acres.

NELHA staff reports that the Sublessee, UFI, is in compliance with all lease terms and conditions of Sublease K-5, and is current on its annual rent payments.

UFI has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.


There is no outstanding rental reopening issues.

No external agency or community reviews were applicable to this request as there will be no change in use.

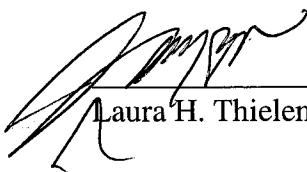
RECOMMENDATION: That the Board:

- A. Consent to the modification or amendment of sublease area under Sublease K-5 to Uwajima Fisheries, Inc., from 2.00 acres to 3.989 acres, as described in the Supplemental Agreement No. 1 to amend Sublease K-5, dated January 1, 1998.
- B. Consent to Sublease K-5 under General Lease No. S-5619 between the Natural Energy Laboratory of Hawaii Authority, as Sublessor, and Uwajima Fisheries Inc., as Sublessee, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:
 - 1. The Lessee shall submit construction plans of the Sublessee's improvements to the Land Division for the Chairperson's approval prior to constructing any improvements on the demised premises;
 - 2. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
 - 3. Review and approval by the Department of the Attorney General; and
 - 4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:


Laura H. Thielen, Chairperson



ROADWAY

10,104.31 Ft. South
29,324.06 Ft. West

325°36'54"

236.43

488.11

251.68

3.989 ACRES

LEASE PARCEL
(1.989 ACRES)

Existing Lease Parcel
(2.000 Acres)

10,053.32 Ft. South
29,600.06 Ft. West

267°39' 24.60
333°39' 18.40
190°7' 16.60
EASEMENT "AS-1"
For Archaeological Site Purposes
947 SQ. FT.
66°08' 12.80
104°48' 13.80
176°07' 30.75

41°00'

314.85

Lot E (ROADWAY)

Lot 5

Lot 1

266.17

483.17

134°30'

217.00

Lot A

Lot 3

NATURAL ENERGY LABORATORY SITE SUBDIVISION

GOVERNMENT LAND
(State of Hawaii)

224°30' — 155.36

224°30'

253.00

134°30' 15.00

224°30'

1ST 4TH

KALAOA

OOMA 1ST

TRUE NORTH
SCALE: 1" = 100' REF

Being Portions of Former Lot 4
of the Natural Energy Laboratory Site Subdivision
and Government Land (State of Hawaii)

At Ooma 1st, North Kona
Island and County of Hawaii, State of Hawaii

1. Azimuths and coordinates are referred to Government Survey Triangulation Station "AKAHIPUU".
2. This map was prepared from compiled record boundary information and from an actual survey on the ground done on September 26, 2000.

This map was prepared by me or LAIRD
under my direct supervision. SURVEYOR
CHRISTAL THOMAS YAMASAKI No. 1085
Licensed Professional Land Surveyor HAWAII, U.S.
State of Hawaii Certificate Number LS-4331

PROJECT NO.: 13448.1
DATE: October 9, 2000

October 9, 2000 p:\active\13448.1\134481.a9n

TEL (808) 329-2353 FAX (808) 329-5334 EMAIL info@hawaii.net

EXHIBIT A

(11/00)

NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY

UWAJIMA FISHERIES, INC.
SUPPLEMENTAL AGREEMENT NO. 1
TO AMEND SUBLEASE K-5
DATED JANUARY 01, 1998
Keahole Point Facility

COPY

THIS SUPPLEMENTAL AGREEMENT NO. 1, made and entered into as of this 19th day of April 2001, but effective as of December 01, 2000, by and between the NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY, STATE OF HAWAII, hereinafter referred to as "NELHA," and UWAJIMA FISHERIES, INC., whose business and post office address is 73-4460 Queen Kaahumanu Hwy., #104, Kailua-Kona, Hawaii 96740, hereinafter referred to as "TENANT";

WITNESSETH:

WHEREAS, the TENANT currently subleases from NELHA certain leased land pursuant to SUBLEASE K-5 between the NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY in relation with the State Department of Business, Economic Development and Tourism and UWAJIMA FISHERIES, INC., a Hawaii corporation, covering 2.0 acres of land at Keahole Airport, Kona, Hawaii, dated January 01, 1998 ("Primary Agreement");

WHEREAS, the TENANT desires to sublease certain additional NELHA leased land near Keahole Airport, North Kona, Island of Hawaii, only for the purposes specified in the TENANT's project proposal attached to the Primary Agreement as Exhibit "A" and incorporated by reference herein; and

SA-1 TO AMEND SUBLEASE K-5 DATED JANUARY 01, 1998 FOR UWAJIMA FISHERIES, INC.

WHEREAS, the parties hereto now desire to modify the Primary Agreement by adding 1.989 acres, as described below, to the leased area being subleased by the TENANT and to increase the fixed monthly rental fees;

NOW, THEREFORE, IT IS MUTUALLY UNDERSTOOD AND AGREED that the Primary Agreement is hereby modified, amended and changed as follows:

1. An additional 1.989 acres of property, as described in Exhibits "A and B" attached hereto, adjacent to TENANT's existing property and including an historic perpetual preservation easement of 947 square feet, will be added to the Primary Agreement.
2. Paragraph 3, entitled "Facilities Use Fees" of the Primary Agreement is amended to include the 1.989 acres of improved land, at a rate of \$100/acre/month, less the 947 square foot easement for which the tenant shall pay no rent. The monthly fixed fee for the net acreage of 3.967 acres is therefore THREE HUNDRED NINETY-SIX AND 70/100 DOLLARS (\$396.70).
3. An historic perpetual preservation easement document called a "Burial Treatment Plan," is attached hereto as Exhibit "C" and describes the conditions for proper treatment of the area as approved by the Department of Land and Natural Resources.

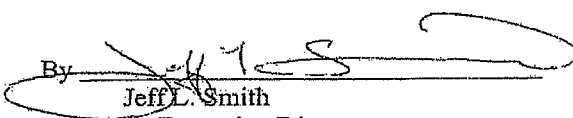
IT IS FURTHER UNDERSTOOD AND AGREED that this Supplemental Agreement No. 1 is supplemental to the Primary Agreement and all terms, conditions and provisions thereof, unless specifically modified, amended, or changed herein remain in full force and effect.

SA-1 TO AMEND SUBLEASE K-5 DATED JANUARY 01, 1998 FOR UWAJIMA FISHERIES, INC.

IN WITNESS WHEREOF, the parties hereto have executed this Supplemental
Agreement No. 1 effective the date indicated above.

NATURAL ENERGY LABORATORY OF
HAWAII AUTHORITY

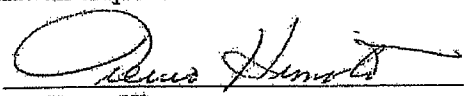
By


Jeff L. Smith
Its Executive Director

Date 19 April 2001

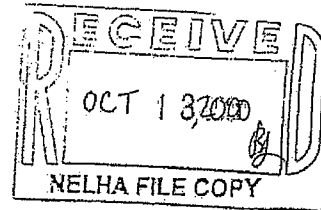
UWAJIMA FISHERIES, INC.
A Hawaii corporation

By


Teruo Himoto
Its President

Date April 19, 2001

EXHIBIT 'B'



LEASE PARCEL

Land situated at the Northeasterly corner of Former Lot 4, and on the Southwesterly side of Roadway and on the Northwesterly side of Lot E (Roadway) of the Natural Energy Laboratory Site Subdivision at Ooma 1st, North Kona, Island and County of Hawaii, State of Hawaii.

Being portions of:

Former Lot 4 of the Natural Energy Laboratory Site Subdivision; and
Government Land (State of Hawaii).

Beginning at the Easternmost corner of this parcel of land, being also the Northeasterly corner of Former Lot 4, a point on the Southwesterly side of Roadway and being the Northernmost corner of Lot E (Roadway) of the Natural Energy Laboratory Site Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "AKAHIPUU" being 10,104.31 feet South and 29,324.06 feet West and running by azimuths measured clockwise from True South:

- | | | | |
|----|--------------|--------|---|
| 1. | 41° 00' | 314.85 | feet along the Northwesterly side of Lot E (Roadway) of the Natural Energy Laboratory Site Subdivision to a point; |
| 2. | 134° 30' | 266.17 | feet along the remainders of Former Lot 4 and Government Land (State of Hawaii) to a point; |
| 3. | 224° 30' | 362.78 | feet along the remainders of Former Lot 4 and Government Land (State of Hawaii) to a point; |
| 4. | 325° 36' 54" | 251.68 | feet along the Southwesterly side of Roadway of the Natural Energy Laboratory Site Subdivision to the point of beginning and containing an area of 1.989 Acres. |

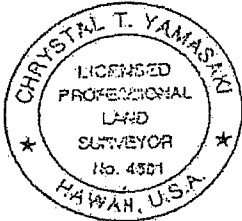
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Page 1 of 2

WES THOMAS ASSOCIATES
- Land Surveyors -
75-5749 Kalawa Street, Kailua-Kona, Hawaii 96740-1817

EXHIBIT B

SUBJECT, HOWEVER, to Easement "AS-1" for Archaeological Site Purpose and being more particularly described by the attached description.



75-5749 Kalawa Street
Kailua-Kona, Hawaii 96740-1817
TMK: 7-3-43; portion 42 (3rd Division)
September 1, 2000
Revised: October 12, 2000

WES THOMAS ASSOCIATES

Chrystal Thomas Yamasaki
Chrystal Thomas Yamasaki
Licensed Professional Land Surveyor
State of Hawaii Certificate No. LS-4331

EASEMENT "AS-1"
FOR ARCHAEOLOGICAL SITE PURPOSES
AFFECTING FORMER LOT 4
OF THE NATURAL ENERGY LABORATORY SITE SUBDIVISION

Land situated approximately 200 feet Southwesterly of Roadway and approximately 158 feet Easterly of the Easterly boundary of Lot A of the Natural Energy Laboratory Site Subdivision at Ooma 1st, North Kona, Island and County of Hawaii, State of Hawaii.

Being portions of:

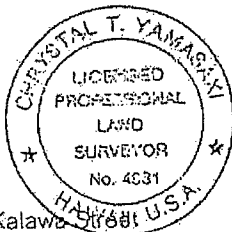
Former Lot 4 of the Natural Energy Laboratory Site Subdivision; and

Government Land (State of Hawaii).

Beginning at the Northwestern corner of this easement, said point of beginning bearing 229° 42' 55" 157.83 feet from the Westernmost corner of the Lease Parcel, the coordinates of said point of beginning referred to Government Survey Triangulation Station "AKAHIPUU" being 10,053.32 feet South and 29,600.06 feet West and running by azimuths measured clockwise from True South:

Thence, for the next six (6) courses following along the remainders of Former Lot 4 of the Natural Energy Laboratory Site Subdivision and Government Land (State of Hawaii):

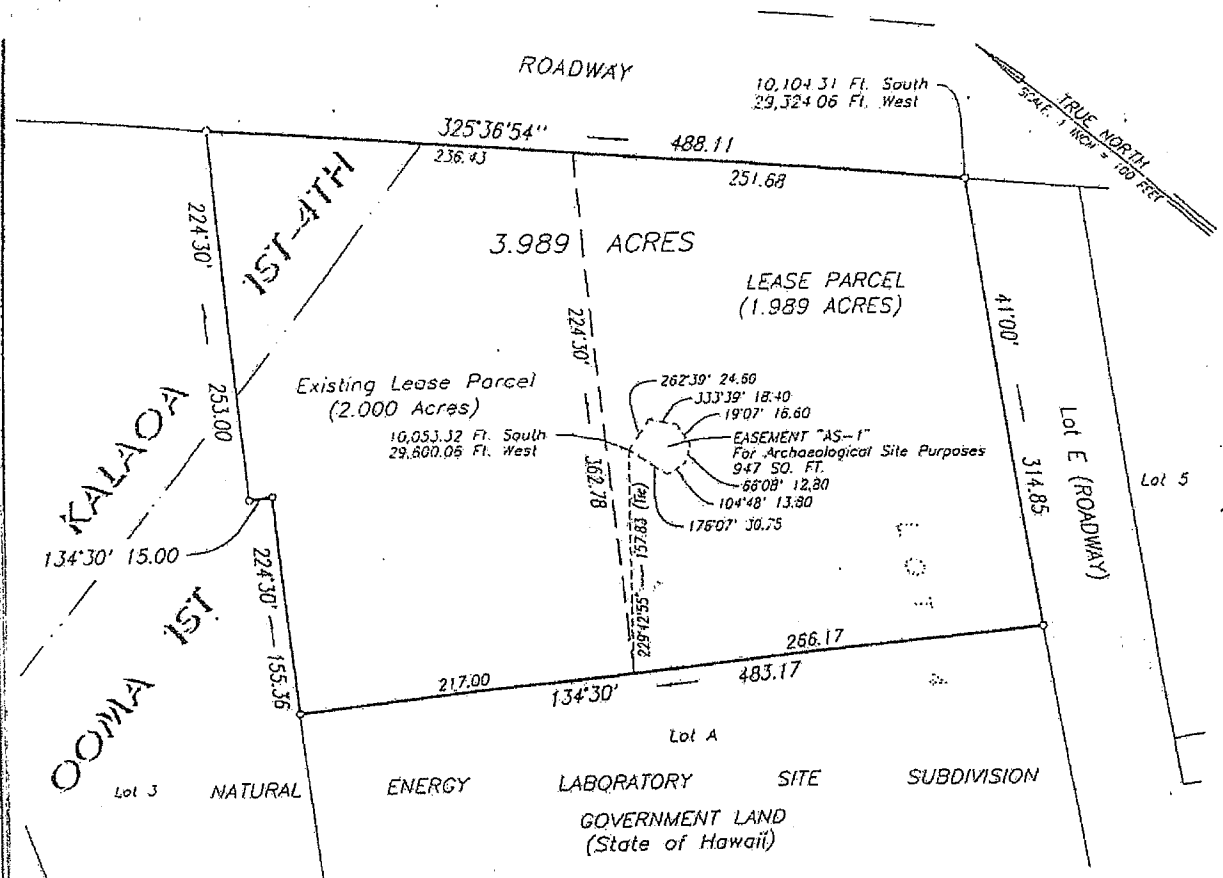
- | | |
|-------------|---|
| 1. 262° 39' | 24.60 feet to a point; |
| 2. 333° 39' | 18.40 feet to a point; |
| 3. 19° 07' | 16.60 feet to a point; |
| 4. 66° 08' | 12.80 feet to a point; |
| 5. 104° 48' | 13.80 feet to a point; |
| 6. 176° 07' | 30.75 feet to the point of beginning and containing an area of 947 Square Feet. |



75-5749 Kalawa Street, Suite 100
Kailua-Kona, Hawaii 96740-1817
TMK: 7-3-43: portion 42 (3rd Division)
September 30, 2000

WES THOMAS ASSOCIATES

Chrystal Thomas Yamasaki
Chrystal Thomas Yamasaki
Licensed Professional Land Surveyor
State of Hawaii Certificate No. LS-4331



MAP SHOWING
LEASE PARCEL
AND EASEMENT "AS-1"
FOR ARCHAEOLOGICAL SITE PURPOSES

Being Portions of Former Lot 4
of the Natural Energy Laboratory Site Subdivision
and Government Land (State of Hawaii)

At Ooma 1st, North Kona
Island and County of Hawaii, State of Hawaii

NOTES:

1. Azimuths and coordinates are referred to Government Survey Triangulation Station "AKAHIPUU".
2. This map was prepared from compiled record boundary information and from an actual survey on the ground done on September 26, 2000.

This map was prepared by me or LASED
under my direct supervision.
Crystal T. Yamasaki
CHRISTAL THOMAS YAMASAKI
Licensed Professional Land Surveyor
State of Hawaii Certificate Number LS-4331

TAX MAP KEY 7-3-43.POR 42 (3RD DIVISION)

FIELD BOOK NO.: 1104

PROJECT NO.: 13448.1
DATE: October 9, 2000

October 9, 2000 p:\oct09\13448.1\134481.dgn

WES THOMAS ASSOCIATES

-- Land Surveyors --

75-5749 Kalaheo Street

Kailua-Kona, Hawaii 96740-1817

TEL. (808) 329-2353 FAX (808) 329-5334 EMAIL wta@hawaii.net

EXHIBIT B